

FILED
12-12-2018
Clerk of Circuit Court
Marquette County, WI
2018CV000107
Honorable Bernard N. Bult

STATE OF WISCONSIN CIRCUIT COURT MARQUETTE COUNTY

HARLAN LEHMAN
N5444 State Road 22
Montello, WI 53949

and

MARIE LEHMAN
N5444 State Road 22
Montello, WI 53949,

Plaintiffs,

PRODUCTS LIABILITY
Civil Code: 30100
Case Number:
Damage Claim Exceeds \$10,000.00

and

NETWORK HEALTH PLAN
1570 Midway Place
Menasha, WI 54952,

and

UNITED STATES DEPT of HEALTH
AND HUMAN SERVICES
Alex Azar, II, Secretary
200 Independence Avenue, S.W.
Washington, D.C. 20201,

and

AMERICAN FAMILY MUTUAL INSURANCE COMPANY
6000 American Parkway
Madison, WI 53783,

Involuntary Plaintiffs,

v.

RHEEM MANUFACTURING COMPANY
1100 Abernathy Road, N.E., Suite 1700
Atlanta, GA 30328

and

ABC INSURNCE COMPANY,



and

HONEYWELL INTERNATIONAL, INC.
115 Tabor Road
Morris Plains, NJ 07950

and

XYZ INSURANCE COMPANY,

Defendants.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiffs named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Marquette County Courthouse 77 West Park Street, Montello, Wisconsin 53949 and to Atterbury, Kammer & Haag, S.C., plaintiffs' attorneys, whose address is 8500 Greenway Boulevard, Suite 103, Middleton, Wisconsin 53562. You may have an attorney help or represent you

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 12th day of December, 2019.

ATTERBURY, KAMMER & HAAG, S.C.

Electronically Signed By: Lee R. Atterbury

Lee R. Atterbury

State Bar No.: 1015600

Eric J. Haag

State Bar No. 1026958

Attorneys for the Plaintiff

8500 Greenway Blvd.
Middleton, WI 53562
(608) 821-4600

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HONEYWELL INTERNATIONAL, INC.
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XYZ INSURANCE COMPANY,

Defendants.

COMPLAINT

For a Complaint against the Defendants, Plaintiffs, Harlan Lehman and Marie Lehman (collectively, “the Lehmans”), by their attorneys, Atterbury, Kammer, & Haag, S.C., by Lee R. Atterbury and Eric J. Haag, allege the following as their complaint:

1. Harlan Lehman and Marie Lehman are adult residents of the State of Wisconsin and are husband and wife, residing at N5444 State Road 22, Montello, WI 53949, Marquette County, WI.
2. On June 23, 2016, a propane gas explosion and fire occurred at the residence of Plaintiffs Harlan and Marie Lehman located at N5444 State Road 22, Montello, WI 53949, Marquette County, WI. The explosion and fire were caused by a defective hot water heater manufactured by Defendant Rheem Manufacturing Company which incorporated a control manufactured by Defendant Honeywell International, Inc.
3. Involuntary Plaintiff Network Health Plan is a domestic corporation with a primary business address of 1570 Midway Place, Menasha, WI 54952. Pursuant to State law, Network Health Plan may be entitled to reimbursement for claims paid in relation to the incident which is the subject of this lawsuit in the event of either settlement or

judgment. The registered agent and address for Network Health Plan is Kathryn Finerty, c/o Network Health Plan, 1570 Midway Place, Menasha, WI 54952.

4. Involuntary Plaintiff United States Department of Health and Human Services, Alex Azur, II, Secretary, is the agency responsible for administering the Federal Medicare program. Upon information and belief, the Federal Medicare program may have paid health claims in relation to Plaintiffs Harlan and Marie Lehman. These claims may be related to medical services rendered in relation to the accident which is the subject of this lawsuit. Pursuant to 42 U.S.C. § 1395(b)(2), Medicare is entitled to reimbursement for related, paid claims if Plaintiffs receive proceeds through settlement or judgment. Further, Plaintiffs assert no claim against the United States, its agencies, or employees. The registered agent and address for the Federal Medicare program is United States Attorney's Office, Western District of Wisconsin, 222 West Washington Avenue, Suite 700, Madison, WI 53703.

5. Involuntary Plaintiff, American Family Mutual Insurance Company is a domestic corporation, with a primary business address of 6000 American Parkway, Madison, WI 53783. Pursuant to State law, American Family Mutual Insurance Company may be entitled to reimbursement for claims it paid for property damage as a result of the explosion and fire that are the subject of this lawsuit. The registered agent and address for American Family Mutual Insurance Company is Corporation Service Company, 8040 Excelsior Drive, Ste. 400, Madison, 53717.

6. Defendant, Rheem Manufacturing Company (hereinafter "Rheem") is a foreign corporation with a primary business address of 1100 Abernathy Road, N.E., Suite 1700, Atlanta, GA 30328. Rheem is a proper party defendant as it designed, manufactured and sold the Richmond Power Vent hot water heater which is the subject of

this action. The registered agent and address for Rheem is CT Corporation System, 222 W. Washington Avenue, Madison, WI 53703.

7. Defendant ABC Insurance Company is the fictitious name for the liability insurer of Defendant Rheem Manufacturing Company in relation to its liability for the incident described below. Upon information and belief, such insurer issued a policy of insurance indemnifying Defendant Rheem Manufacturing Company for the incident described below.

8. Defendant, Honeywell International, Inc. (hereinafter "Honeywell") is a foreign corporation with a primary business address of 115 Tabor Road, Morris Plains, NJ 07950. Honeywell is a proper party defendant as it designed, manufactured and sold the PVWHC (power vent water heater control) which was incorporated into the Richmond Power Vent hot water heater which is the subject of this action. The registered agent and address for Honeywell is Corporation Service Company, 8040 Excelsior Drive, Ste. 400, Madison, WI 53717.

9. Defendant XYZ Insurance Company is the fictitious name for the liability insurer of Defendant Honeywell International, Inc. in relation to its liability for the incident described below. Upon information and belief, such insurer issued a policy of insurance indemnifying Defendant Honeywell International, Inc. for the incident described below.

10. On June 23, 2016, the hot water heater manufactured by Rheem and the control manufactured by Honeywell malfunctioned, causing a propane gas explosion and fire and injuries to Harlan Lehman and Marie Lehman.

11. As a direct and proximate result of that incident, Plaintiffs have sustained severe physical injuries, incurred significant medical expenses, lost income, and are likely to suffer damages in the future.

FIRST CAUSE OF ACTION AGAINST DEFENDANT RHEEM – NEGLIGENCE

Plaintiffs Harlan Lehman and Marie Lehman reallege and incorporate by reference herein all preceding paragraphs to this Complaint.

12. Defendant Rheem was negligent in the design and manufacture of its hot water heater. This negligence includes, but is not limited to, failing to use a safe design which would prevent the escape of propane gas and incorporating a control valve which failed to prevent the escape of unignited propane gas in sufficient amounts to cause a catastrophic explosion and fire and in failing to comply with applicable safety regulations.

13. It was reasonably foreseeable that an explosion and fire would occur.

14. Said negligence was a substantial factor in causing the injuries and damages sustained by plaintiffs and as a result of that negligence, Defendant Rheem is liable to the plaintiffs in the amount of their damages.

**SECOND CAUSE OF ACTION AGAINST
DEFENDANT RHEEM – STRICT LIABILITY**

Plaintiffs Harlan Lehman and Marie Lehman reallege and incorporate by reference herein all preceding paragraphs to this Complaint.

15. That the Rheem hot water heater was defective in that it contained a manufacturing defect and design defect which allowed the escape of unignited propane gas in an amount sufficient to result in a catastrophic explosion and fire.

16. The defective condition of the hot water heater rendered it unreasonably dangerous to users such as the plaintiffs.

17. This defective condition existed at the time the product left the control of defendant Rheem.

18. The hot water heater at issue reached the plaintiffs without substantial change in the condition from which it was sold.

19. The defective conditions described above were a cause of the plaintiffs' damages.

**FIRST CAUSE OF ACTION AGAINST
DEFENDANT HONEYWELL – NEGLIGENCE**

Plaintiffs Harlan Lehman and Marie Lehman reallege and incorporate by reference herein all preceding paragraphs to this Complaint.

20. Defendant Honeywell was negligent in the design and manufacture of its power vent water heater control in that it allowed the escape of unignited propane gas in sufficient amount to result in a catastrophic explosion and fire and further provided the ignition thereof.

21. It was reasonably foreseeable that an explosion and fire would occur.

22. Said negligence was a substantial factor in causing the injuries and damages sustained by plaintiffs and as a result of that negligence, Defendant Honeywell is liable to the plaintiffs in the amount of their damages.

**SECOND CAUSE OF ACTION AGAINST
DEFENDANT HONEYWELL – STRICT LIABILITY**

Plaintiffs Harlan Lehman and Marie Lehman reallege and incorporate by reference herein all preceding paragraphs to this Complaint.

23. That the Honeywell power vent water heater control was defective in that it contained a manufacturing defect, was defective in design, and was otherwise defective in that it allowed the escape of unignited propane gas in sufficient amount to result in a catastrophic explosion and fire and further provided the source of ignition thereof.

16. The defective condition of the power vent water heater control rendered it unreasonably dangerous to users such as the plaintiffs.

17. This defective condition existed at the time the power vent water heater control left the control of defendant Honeywell.

18. The power vent water heater control at issue reached the plaintiffs incorporated in the Rheem hot water heater without substantial change in the condition from which it was sold.

19. The defective conditions described above were a cause of the plaintiffs' damages.

WHEREFORE, plaintiffs pray for judgment against the defendants in an amount to be determined at trial, together with costs and disbursements herein.

Dated this 12th day of December, 2019.

ATTERBURY, KAMMER & HAAG, S.C.

Electronically Signed By: Lee R. Atterbury

Lee R. Atterbury

State Bar No.: 1015600

Eric J. Haag

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